

House Engrossed Senate Bill

State of Arizona
Senate
Forty-sixth Legislature
First Regular Session
2003

CHAPTER 181

SENATE BILL 1090

AN ACT

AMENDING SECTIONS 8-106, 8-120 AND 8-121, ARIZONA REVISED STATUTES; RELATING
TO ADOPTION.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 8-106, Arizona Revised Statutes, is amended to
3 read:

4 8-106. Consent to adoption; waiver; consent to the release of
5 information; notification to potential fathers

6 A. The court shall not grant an adoption of a child unless consent to
7 adopt has been obtained and filed with the court from the following:

8 1. The child's birth or adoptive mother, if living.

9 2. The child's father if any of the following is true:

10 (a) The father was married to the child's mother at the time of
11 conception or at any time between conception and the child's birth unless his
12 paternity is excluded or another man's paternity is established pursuant to
13 title 25, chapter 6, article 1.

14 (b) The father has adopted the child.

15 (c) The father's paternity is established under title 25, chapter 6,
16 article 1 or section 36-322.

17 3. A child who is twelve years of age or older and who gives consent
18 in open court.

19 4. Any guardian of the person of the child who is appointed by a court
20 and given authority by it to consent to the child's adoption.

21 5. An agency or the division that has been given consent to place the
22 child for adoption by the parent or parents whose consent would be necessary
23 under paragraph 1 or 2 of this subsection, or that has been given authority
24 in other legal proceedings to place the child for adoption.

25 6. The guardian of any adult parent for whom a guardian is currently
26 appointed.

27 B. It is not necessary for a person to obtain consent to adopt from
28 the following:

29 1. An adult parent for whom a guardian is currently appointed.

30 2. A parent whose parental rights have been terminated by court order.

31 3. A parent who has previously consented to an agency's or the
32 division's placement of the child for adoption.

33 4. A person whose consent is not required under subsection A of this
34 section.

35 C. The minority of the child or parent does not affect the child's or
36 parent's competency to give consent in the instances set forth in this
37 section.

38 D. A consent to adopt is irrevocable unless obtained by fraud, duress
39 or undue influence.

40 E. An agency, the division or an attorney participating or assisting
41 in a direct placement adoption pursuant to section 8-130 shall obtain from
42 a birth parent, ~~giving consent~~ at the time consent for adoption is obtained,
43 a notarized statement granting PERMISSION or withholding permission for the
44 child being adopted, WHEN THE CHILD REACHES EIGHTEEN YEARS OF AGE, to:

1. obtain identifying AND NONIDENTIFYING information about the child and the consenting birth parent ~~on reaching twenty-one years of age.~~ The agency, division or attorney shall inform the birth parent at the time of obtaining the notarized statement that the decision to grant PERMISSION or withhold permission may be changed at any time by filing a notarized statement with the court ~~and the agency, division or attorney that obtained the original notarized statement.~~ THE MOST RECENT NOTARIZED STATEMENT SHALL OPERATE AS CONSENT FOR THE COURT TO GRANT OR WITHHOLD IDENTIFYING AND NONIDENTIFYING INFORMATION.

~~2. Be informed of the death of the child adopted and the date and the cause of death.~~

F. A notarized affidavit signed by the mother listing all potential fathers shall be filed with the court. The affidavit shall attest that all of the information contained in the affidavit is complete and accurate.

G. Notice shall be served on each potential father as provided for the service of process in civil actions. The notice shall be substantially in the form prescribed in subsection I of this section and shall inform the potential father of all of the following:

1. That adoption is planned.

2. The potential father's right to consent or withhold consent to the adoption.

3. The potential father's responsibility to initiate paternity proceedings under title 25, chapter 6, article 1, and to serve the mother within thirty days of completion of service.

4. The potential father's responsibility to proceed to judgment in the paternity action.

5. The potential father's right to seek custody.

6. The potential father's responsibility to begin to provide financial support for the child if paternity is established.

7. That the potential father's failure to file a paternity action pursuant to title 25, chapter 6, article 1, and to serve the mother and proceed to judgment in the paternity action as prescribed by this section, bars the potential father from bringing or maintaining any action to assert any interest in the child.

H. A mother may apply to the court for permission to omit her address from the affidavit and from the notice to potential fathers. The court shall grant this request if the mother shows to the court's satisfaction this is necessary to protect her safety.

1. The notice required pursuant to subsection G of this section shall be in substantially the following form:

Notice:

Notice is given to _____ that you have been identified by _____, the natural mother, residing at _____, as a potential father of a child to be born or, born on _____, in _____.

1 You are informed of the following:

2 1. _____, the natural mother, plans to place the
3 child for adoption.

4 2. Under sections 8-106 and 8-107, Arizona Revised
5 Statutes, you have the right to consent or withhold consent to
6 the adoption.

7 3. Your written consent to the adoption is irrevocable
8 once you give it.

9 4. If you withhold consent to the adoption, you must
10 initiate paternity proceedings under title 25, chapter 6,
11 article 1, Arizona Revised Statutes, and to serve the mother
12 within thirty days after completion of service of this notice.

13 5. You have the obligation to proceed to judgment in the
14 paternity action.

15 6. You have the right to seek custody.

16 7. If you are established as the child's father, you must
17 begin to provide financial support for the child.

18 8. If you do not file a paternity action under title 25,
19 chapter 6, article 1 and do not serve the mother within thirty
20 days after completion of the service of this notice and pursue
21 the action to judgment, you cannot bring or maintain any action
22 to assert any interest in the child.

23 9. The Indian child welfare act may supersede the Arizona
24 Revised Statutes regarding adoption and paternity.

25 10. You may wish to consult with an attorney to assist
26 you in responding to this notice.

27 Sec. 2. Section 8-120, Arizona Revised Statutes, is amended to read:

28 8-120. Records; inspection; exception; destruction of certain
29 records

30 A. Except as provided in section 8-129, all files, records, reports
31 and other papers compiled in accord with this article, whether filed in or
32 in possession of the court, an agency or any person or association, shall be
33 withheld from public inspection.

34 B. Such files, records, reports and other papers may be open to
35 inspection by persons and agencies having a legitimate interest in the case
36 and their attorneys and by other persons and agencies having a legitimate
37 interest in the protection, welfare or treatment of the child if so ordered
38 by the court.

39 C. ~~The provisions of This section shall DOES not be construed to~~
40 prohibit persons employed by the court, the division or an agency from
41 conducting the investigations or performing other duties pursuant to this
42 article within the normal course of their employment.

1 D. This section does not prohibit persons employed by the court, the
2 division, an attorney participating or assisting in a direct placement
3 adoption pursuant to section 8-130 or an agency from providing partial or
4 complete identifying information between a birth parent and adoptive parent
5 when the parties mutually agree to share specific identifying information and
6 make a written request to the court, the division or the agency.

7 E. EXCEPT FOR FILES THAT BELONG TO AN ATTORNEY, all files, records,
8 reports and other papers not filed in or in the possession of the court shall
9 not be destroyed until after a ninety-nine year period. THE FILES THAT
10 BELONG TO AN ATTORNEY SHALL NOT BE DESTROYED UNTIL AFTER A SEVEN YEAR PERIOD.

11 Sec. 3. Section 8-121, Arizona Revised Statutes, is amended to read:

12 8-121. Confidentiality of information; exceptions

13 A. It is unlawful, except for purposes for which files and records or
14 social records or parts thereof or information therefrom have been released
15 pursuant to subsection C of this section or section 8-120, 8-129 or 8-134,
16 or except for purposes permitted by order of the court, for any person to
17 disclose, receive or make use of, or authorize, knowingly permit, participate
18 in or acquiesce in the use of, any information involved in any proceeding
19 under this article directly or indirectly derived from the files, records,
20 reports or other papers compiled pursuant to this article, or acquired in the
21 course of the performance of official duties UNTIL ONE HUNDRED YEARS AFTER
22 THE DATE OF THE ORDER ISSUED PURSUANT TO SECTION 8-116. AFTER ONE HUNDRED
23 YEARS HAS ELAPSED FROM THE DATE OF THE ORDER ISSUED PURSUANT TO SECTION 8-116
24 THE COURT SHALL TRANSFER ALL FILES, RECORDS, REPORTS AND OTHER DOCUMENTS IN
25 POSSESSION OF THE COURT RELATING TO THE ADOPTION TO THE ARIZONA STATE
26 LIBRARY, ARCHIVES AND PUBLIC RECORDS. THE ITEMS TRANSFERRED PURSUANT TO THIS
27 SUBSECTION SHALL BE AVAILABLE FOR PUBLIC INSPECTION DURING BUSINESS HOURS AND
28 MAY BE MADE AVAILABLE IN AN ALTERNATIVE FORMAT.

29 B. The provisions of this section shall not be construed to prohibit
30 persons employed by the court, the division or an agency from conducting the
31 investigations or performing other duties pursuant to this article within the
32 normal course of their employment.

33 C. This section does not prohibit persons employed by the court, the
34 division, an attorney participating or assisting in a direct placement
35 adoption pursuant to section 8-130 or an agency from providing partial or
36 complete identifying information between a birth parent and adoptive parent
37 when the parties mutually agree to share specific identifying information and
38 make a written request to the court, the division or the agency.

39 D. A person may petition the court to obtain information relating to
40 an adoption in the possession of the court, the division or any agency or
41 attorney involved in the adoption. Nonidentifying information may be
42 released by the court pursuant to section 8-129. The court shall not release
43 identifying information unless the person requesting the information has
44 established a compelling need for disclosure of the information or consent
45 has been obtained pursuant to subsection E of this section or from the birth

1 parent pursuant to section 8-106. If a compelling need for disclosure of
2 information is established, the court may decide what information, if any,
3 should be disclosed and to whom and under what conditions disclosure may be
4 made.

5 E. An adoptee who is ~~twenty-one~~ EIGHTEEN years of age or older or a
6 birth parent may file at any time with the court and the agency, division or
7 attorney who participated in the adoption a notarized statement granting
8 consent, withholding consent or withdrawing a consent previously given for
9 the release of confidential information. If an adoptee who is ~~twenty-one~~
10 EIGHTEEN years of age or older and the birth mother or birth father have
11 filed a notarized statement granting consent to the release of confidential
12 information, the court may disclose information, except identifying
13 information relating to a birth parent who did not grant written consent, to
14 the adoptee or birth parent.

15 F. THIS SECTION DOES NOT PROHIBIT A PERSON FROM NOTIFYING A BIRTH
16 PARENT OF THE DEATH OF A CHILD THAT THE BIRTH PARENT HAS PLACED FOR ADOPTION.

APPROVED BY THE GOVERNOR MAY 9, 2003.

FILED IN THE OFFICE OF THE SECRETARY OF STATE MAY 9, 2003.

Passed the House April 10, 2003,

by the following vote: 53 Ayes,

3 Nays, 4 Not Voting

Jake Flake
Speaker of the House

Norman L. Moore
Chief Clerk of the House

Passed the Senate February 25, 2003,

by the following vote: 29 Ayes,

0 Nays, 1 Not Voting

Ken Bennett
President of the Senate

Charmine Bellington
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

 day of , 20 ,

at o'clock M.

Secretary to the Governor

Approved this day of

 , 20 ,

at o'clock M.

Governor of Arizona

S.B. 1090

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this day of , 20 ,

at o'clock M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate May 5, 20 03

by the following vote: 27 Ayes,

2 Nays, 1 Not Voting

[Signature]
President of the Senate
[Signature]
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

5 day of May, 20 03

at 2:30 o'clock P. M.

[Signature]
Secretary to the Governor

Approved this 9 day of

May, 20 03,

at 2:45 o'clock P. M.

[Signature]
Governor of Arizona

S.B. 1090

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 9 day of May, 20 03

at 4:13 o'clock P. M.

[Signature]
Secretary of State